Alternatives under CWA's Section 402 to bring Aggremax^{tm} Storage Pile to Manageable Storage Levels, and Particle Matter and Dust under Control

Issue: The Aggremax storage pile continues to grow to alarming levels causing excessive levels of particle and dust in air and land and potential non-compliance with the Clean Water Act (CWA).

Statutory Authorities: Section 301(a) of the CWA provides that except as in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued under CWA's Section 402, the discharge of any pollutant by any person shall be unlawful. CWA's Section 402 provided the legal authorities to establish the NPDES permitting program. CWA's Section 402(p) requires a NPDES permit for the storm water discharge associated with industrial activity. Any permit violation becomes a violation of CWA's Section 301, and it is enforceable under CWA's Section 309.

Regulatory Authorities: The NPDES program requires permits for the discharge of any pollutant from any point source into waters of the United States [40 C.F.R. § 122.5(b)]. The NPDES regulations require operators, such as AES, to obtain a NPDES permit for storm water discharges associated with industrial activity [40 C.F.R. §§ 122.26(a)(1)(ii) and § 122.26(b)(14)(x)].

Permitting Requirements: AES obtained coverage under the Multi-Sector General Permit for Stormwater Discharges from Industrial Activities (MSGP) in September 2013, upon completion of certain activities and actions required by the Administrative Compliance Order (ACO) issued pursuant to CWA's Section 309(a). The ACO was issued in December 2011.

The MSGP requires the selection, design, construction/implementation of control measure, such as non-structural and structural best management practices (BMPs), to meet the non-numeric effluent limits contained in the MSGP (Section 2.1). The selection, design, installation, and implementation of the control measures must be in accordance with good engineering practices and manufacturer's specifications. The following bullets include the required controls measures for the Aggremax Storage Pile contained in the MSGP:

- **Minimize Exposure** (Part 2.1.2.1) – Minimize the exposure of material storage areas (loading and unloading, and storage) to rain and runoff by either locating these industrial materials and activities inside or protecting them with storm resistant coverings. The MSGP does not recommend significant enlargement of impervious surface areas.[1]

- **Good Housekeeping** (Part 2.1.2.2) – Keep clean all exposed areas that are potential sources of pollutants, using such measures as sweeping at regular intervals.

- **Maintenance** (Part 2.1.2.3) – Regularly maintain and repair systems to avoid situations that may result in releases of pollutants in stormwater discharged to receiving waters. Maintain all control measures that are used to achieve the effluent limits in effective operating condition.

- **Erosion and Sediment Controls** (Part 2.1.2.5) – Stabilize exposed areas and contain runoff using structural and/or non-structural BMPs to minimize on-site erosion and sedimentation, and the resulting discharge of pollutants. Place flow velocity dissipation devices at discharge locations and within outfall channels where necessary to reduce erosion and/or settle out pollutants.

- **Management of Runoff** (Part 2.1.2.6) – Divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff, to minimize pollutants in the discharges.

- **Dust Generation & Vehicle Tracking of Industrial Materials** (Part 2.1.2.12) – Minimize generation of dust and off-site tracking of raw, final, or waste materials.

- **Fugitive Dust Emissions** (Part 8.O.4.1) – Minimize fugitive dust emissions from coal handling areas.[2]

- **Ash Loading Areas** (Part 8.O.4.11) – Reduce or control the tracking of ash and residue from ash loading areas. Clear the ash building floor and immediately adjacent roadways of spillage, debris, and excess water before departure of each loaded vehicle.

[1] *Aggremax does not need to be enclosed or covered if stormwater runoff from affected areas will not be discharged to receiving waters*.
[2] *B*y installing specially designed tires or washing vehicles in a designated area before they leave the site, and controlling the washwaters.

- **Areas Adjacent to Disposal Ponds** (Part 8.O.4.12) – Minimize contamination of surface runoff from areas adjacent to disposal ponds. Reduce ash residue that may be tracked on to access roads traveled by residue handling vehicles, and reduce ash residue on exit roads leading into and out of residue handling areas.

- **Duty to Comply** (Part B.1) – You must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

- **Duty to Mitigate** (Part B.4) – You must take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

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